



Indiana Department of Homeland Security

Information Bulletin

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To: All District Administrative Coordinators
All District Coordinators
All District Fiscal Agents
All District Planning Council Members
All District Planning Oversight Committee Members
All Emergency Management Directors

From: Gerri Husband
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Indiana Department of Homeland Security

Subject: Fiscal Agent/Administrative Coordinator Guidance

Background

The questions/answers in this letter are based on the fact that a Local Unit of Government serving as Fiscal Agent will be using U.S. Department of Homeland Security, Federal Emergency Management Agency State Homeland Security Program funding to pay for the District Interim Administrator position. This funding is being provided to the Fiscal Agent through a sub-grant agreement between the Local Unit of Government and the Indiana Department of Homeland Security. As the Sub-grantee, the Fiscal Agent is required to comply with all of the terms and conditions of the sub-grant agreement, including any federal or state laws, regulations or other requirements referenced by or incorporated into the sub-grant agreement. If U.S. DHS or the State of Indiana determine that expenditures have been made that are not in compliance with the terms and conditions of this Sub-grant agreement, the Fiscal Agent could be required to reimburse the State or Federal government for these non-compliant expenditures.

Q1 What category does the IAC Position fall under? The District Interim Administrator would absolutely not be a state employee, a state contractor, a federal employee, or a federal contractor. The District Interim Administrator could be an independent contractor or an employee of the Local Unit of Government that is a party to the Sub grant agreement.

Q2.a. Who should the IAC report to? This decision is up to the Local Unit of Government.

Q2.b. Who is accountable for the IAC actions? This decision is up to the Local Unit of Government. However, the Local Unit of Government is accountable to the State and to FEMA for the use of all the federal grant funds provided by to the Local Unit of Government that is a party to the Sub grant agreement.

Q3. If the IAC has to report to the Fiscal Agent, can the Fiscal Agent require the IAC to work from the Fiscal Agent office? This decision is up to the Local Unit of Government that is a party to the Sub grant agreement.

Q4. Should the IAC contract be a "continuing" contract renewable yearly? We are not certain

exactly what is meant by the term “continuing” contract. The Local Unit of Government could include a renewal provision in their contract which allows them to renew the contract with the District Interim Administrator and if they are provided additional State Homeland Security Program funding to pay for a District Interim Administrator for a future year, and the sub-grant agreement through which these grant funds were being provided allowed this to occur, the Local Unit of Government could use these funds to renew the contract with the District Interim Administrator, however, the Local Unit of Government would first have to perform the cost analysis required under 44 CFR 13.36(f). Just to note, the Local Unit of Government is required to include a termination for convenience provision in every contract in excess of \$10,000 which is funded using these federal funds, which would allow the Local Unit of Government to terminate the contract for its convenience at any time.

Q5. If this is a “continuing” contract please specify the guidelines for such. See above

Q6. What is the state procurement policy to hire or rehire an IAC? The Local Unit of Government is required to comply with the terms and conditions of the Sub-grant Agreement which provides the funds being used by the Local Unit of Government. Currently, many of these requirements are from the Federal regulations under 44 CFR 13.36, which establishes certain procurement and contracting requirements that must be followed when these federal funds are being used. A brief summary of some of these procurement and contracting requirements are incorporated into each Sub-grant Agreement. See Attachment 1, which is the procurement/contract summary that is incorporated into grant agreements providing 2011 State Homeland Security Program Funds (the federal regulations at 44 CFR 13.36 contain much more detail regarding these procurement requirements and it is important that at least one person involved in procurement and contracting for the Local Unit of Government be familiar with all of the federal procurement requirements.) Some important elements from these requirements are as follows:

- i. The Local Unit of Government is required to use a competitive bidding process for every procurement using these federal funds, including the award of a contract for services (there are limited exceptions to this requirement for competitive bidding, but they would not be applicable in this situation).
- ii. Geographical preferences in evaluation of bids are prohibited.
- iii. Contracts must be monitored by the Local Unit of Government to assure compliance with terms, conditions and specifications of contracts or purchase orders.
- iv. The Local Unit of Government must maintain a written code of standards governing award and administration of contracts (conflicts of interest, selection and award, etc.) and the Local Unit of Government must comply with the applicable federal conflict of interest requirements established in 44 CFR 13.36(b)(3).
- v. Supporting documents must be maintained and include - rationale for method of procurement, selection of contract type, contractor selection or rejection and basis for contract price

Q7. What is required to be included in the IAC Contract? All contracts using these federal funds are required to contain certain terms and conditions, and the Local Unit of Government is required by its Sub-grant Agreement to include these terms and conditions in each such contract. See Attachment 2 (this Attachment is not all-inclusive and does not cover all situations). The IAC specific requirements from IDHS were described in Information Bulletin 11-003 which can be found at: <http://www.in.gov/dhs/files/DPIB11-03.pdf>.

Q8. Is the SHSP grant allotment of \$50,000 a firm salary for the IAC position? No, Director Wainscott has specified that \$50,000 must be used to support the district administrator position. Any amount not used for these salaries should go to the district task force project allocation (this was with regard to the 2011 SHSP funding).

Q9. Does this salary include all expenses? As indicated above, the \$50,000 is being provided to support the District Administrator position. If the Local Unit of Government wanted to use the entire \$50,000 for the salary and use its own funding to pay for expenses of the District Administrator that would be allowable. Alternatively, the Local Unit of Government could decide to pay a salary of less than \$50,000 and use some of the remaining funds to pay the expenses incurred by the Interim District Administrator in the course of their duties.

Q10. Can the IAC turn in hotel, meal, travel and office supply expenses to be reimbursed by grant funds other than SHSP grant allotted for IAC salary? The use of grant funds must comply with the terms and conditions of the Sub-grant Agreement which provided those funds. As such it is not possible to answer this question without more information. However, if the Interim District Administrator is a Local Unit of Government employee or Local Unit of Government Contractor, the Local Unit of Government could prohibit this from occurring either through its employment relationship or its Contract with the Interim District Administrator.

Q11. Can an IAC be paid from the SHSP grant and be paid by a contractor from another grant at the same time? This question cannot be answered generally; it is a case-specific situation which would require much more information before it could be answered. However, if the Interim District Administrator is a Local Unit of Government employee or Local Unit of Government Contractor, the Local Unit of Government could prohibit this from occurring either through its employment relationship or its Contract with the Interim District Administrator. One requirement that would need to be considered in evaluating this issue are the ethics requirements established under 44 CFR 13.36(b)(3) which govern the use of these funds. This provision is included in its entirety as Attachment 3 of this letter.

Q12. If the requirements of the IAC contract are broken by either party, what is necessary to terminate the contract? The contract should contain language that addresses this issue. The Local Unit of Government is required to include both a termination for convenience provision and a termination for default provision in every contract in excess of \$10,000 which is funded using these federal funds, which will allow the Local Unit of Government to terminate the contract for its convenience at any time or allow the Local Unit of Government to terminate the Contract for default by the Contractor.

Q13. If the Fiscal Agent is required to change the past process which the IAC contract was renewed, will someone at the state level back up the Fiscal Agent in the change to become compliant? The Local Unit of Government is required to comply with the terms and conditions of its sub-grant agreements and the Indiana Department of Homeland Security will back-up the Local Unit of Government if it needs such assistance to so comply.

ATTACHMENT 1

(Referenced in response to Question 6)

MAKING PURCHASES USING FEDERAL GRANT FUNDS

Federal Procurement and Contracting Requirements: A Sub-grantee is required to follow its own procurement procedures **as long as those procedures meet or exceed the federal procurement standards** established in 44 CFR 13.36. A brief summary of some of these federal requirements is as follows:

A. Procurement Methods (44CFR 13.36(d))

i. Small Purchase Procedure (44 CFR 13.36(d)(1))

To purchase services and supplies of \$100,000 or less

- Relatively simple and informal method
- Cannot exceed simplified acquisition threshold of \$100,000
- Must obtain price or rate quotation from adequate number of qualified sources (usually 3)
- Awarded based on lowest documented price quote

ii. Sealed Bids (Formal Advertising) (44 CFR 13.36(d)(2))

- For sealed bidding to be feasible, all of the following conditions should be present (generally used for construction and debris removal contracts):
 - A complete, adequate and realistic specification or description of project is available.
 - Two or more responsible bidders are willing and able to compete effectively.
 - Bids publicly solicited and advertised and a firm-fixed-price contract (lump sum or unit price) awarded
 - The procurement lends itself to a firm fixed price contract.
- If the sealed bid procurement method is used, the following requirements are applicable:
 - The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids.
 - The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.
 - All bids will be publicly opened at the time and place prescribed in the invitation for bids.
 - A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of
 - Any or all bids may be rejected if there is a sound documented reason
- Contract awarded to the responsible bidder whose bid conforms with invitation for bid and whose bid is lowest in price

iii. Competitive Proposals (44 CFR 13.36(d)(3))

Generally used to purchase Architectural, engineering or professional and personal services when conditions are not appropriate for the use of sealed bids.

- Requests for proposals will be publicized and identify all evaluation factors and their relative importance.
- Any response to publicized requests for proposals shall be honored to the maximum extent practical.

- Proposals will be solicited from an adequate number of qualified sources.
- The Sub-grantee must have a method for conducting technical evaluations of the proposals received and for selecting awardees
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered
- The Sub-grantee may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

iv. Noncompetitive (Sole Source) proposals (44 CFR 13.36(d)(4))

The following conditions are applicable to all sole source or noncompetitive procurements:

- (1) **Competitive Procurement must be infeasible:** A noncompetitive procurement can only be used when the award of a contract is infeasible under small purchase order procedures, sealed bids or competitive proposals and one (1) of the following circumstances apply:
 - (A) The item is available only from a single source;
 - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (C) The awarding agency (IDHS) authorizes noncompetitive proposals; or
 - (D) After solicitation of a number of sources, competition is determined inadequate.
- (2) **Cost analysis required:** Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
- (3) **Awarding agency review may be required:** A Sub-grantee is required to submit the proposed procurement to IDHS for pre-award review (in accordance with 44 CFR 13.36(g)).]

B. General Federal Procurement Standards (44 CFR 13.36(b)):

- Contracts must be monitored by the Sub-grantee to assure compliance with terms, conditions and specifications of contracts or purchase orders.
- The Sub-grantee must maintain written code of standards governing award and administration of contracts (conflicts of interest, selection and award, etc.) and the Sub-grantee must comply with the applicable federal conflict of interest requirements established in 44 CFR 13.36(b)(3)
- The Sub-grantee will review proposed procurements to avoid unnecessary or duplicate purchases
- Intergovernmental agreements for procurement are encouraged
- Use of excess and surplus property is suggested when feasible
- Use of value engineering clauses in construction contracts of sufficient size is encouraged
- Contracts will be awarded only to responsible contractors possessing ability to perform
- Supporting documents must be maintained and include - rationale for method of procurement, selection of contract type, contractor selection or rejection and basis for contract price
- Use of time and material contracts is limited to situations where 1) no other contract is feasible, and 2) includes a ceiling price. (This must be documented)
- The Sub-grantee will have responsibility for settlement of all contractual and administrative issues arising out of procurements
- The Sub-grantee must have protest procedures to handle and resolve disputes relating to procurements

C. Competition (44 CFR 13.36(c)):

- All procurement transactions will provide full and open competition. Examples of restrictive competition include:
 - a. Unreasonable requirements on firms in order for them to qualify
 - b. Requiring unnecessary experience or excessive bonding
 - c. Noncompetitive awards to consultants on retainer
 - d. Organizational conflicts of interest
 - e. Specifying only brand name products
 - f. Any arbitrary action in the procurement process
- Geographical preferences in evaluation of bids is prohibited
- Written selection procedures must be in place for all procurements identifying all requirements firms must fulfill
- Ensure all pre-qualified lists of persons, firms or products are current and include enough qualified sources to ensure maximum open and free competition

D. Affirmative Action (44 CFR 13.36(e)):

- The Sub-grantee will take all necessary affirmative action steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible

E. Contract Cost and Price: (44 CFR 13.36(f))

- The Sub-grantee must perform cost or price analysis in connection with every procurement action
- The Sub-grantee must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
- Costs and prices based on estimated costs will be allowable only to the extent that they are consistent with Federal cost principles.
- Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

F. State Review: (44 CFR 13.36(f))

- The Sub-grantee must make available to the State technical specifications on proposed procurements and, on request, make pre award documents available i.e. requests for proposals or invitations for bids, independent cost estimates.
- Review is required in all cases when a Sub-grantee's procurement procedure fails to comply with standards, procurement exceeds simple acquisition threshold and is awarded without competition or only one bid or offer is received, or is awarded to other than low bidder or brand name is specified.
- The Sub-grantee may request that its procurement system be reviewed to determine whether its system meets these standards, or the Sub-grantee may self-certify its procurement system

G. Bonding Requirements: (44 CFR 13.36(h))

For construction or facility improvement contracts exceeding \$100,000, the State may accept the Sub-grantee's bonding policy and requirements. If such a determination has not been made, the following are minimum bonding requirements

- A bid guarantee from each bidder equivalent to five (5) percent of bid price
- A performance bond from contractor for 100% of contract price
- Payment bond of the part of the contractor for 100% of the contract price.

H. Types of Contracts

Lump sum: Contract for work within a prescribed boundary with a clearly defined scope and total price

Unit price	Contract for work done on an item-by-item basis with cost determined on a unit basis
Cost + fixed fee	Either a lump sum or unit price contract with a fixed contractor fee added into price
Time & materials	Should be avoided, but may be allowed for work necessary immediately after disaster and after a determination that no other contract is suitable; include a cost ceiling or “not to exceed” provision [44CFR13. 36(b)(10)]
Cost plus %of cost	Not allowed by FEMA Regulations
Contingency	Not allowed by FEMA Regulations

I. Contract Provisions: (44 CFR 13.36(i)) Contracts must contain these provisions:

- Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms—Contracts for more than \$100,000.
- Termination clause for cause and termination for convenience—Contracts for more than \$10,000.
- Compliance with Equal Employment Opportunity regulations—All construction contracts awarded in excess of \$10,000.
- Compliance with Anti-Kickback regulations—All contracts for construction or repair
- Compliance with Davis-Bacon Act —Construction contracts in excess of \$2,000
- Compliance with Contract Work Hours and Safety Standards Act—Construction contracts in excess of \$2,000, and in excess of \$2,500 for contracts which involve the employment of mechanics or laborers
- Notice of reporting requirements and regulations pertaining to reporting—All contracts
- Notice of requirements pertaining to patent rights—All contracts
- Notice of requirements pertaining to copyrights and rights in data—All contracts
- Access of any records by grantee, sub grantee, Federal grantor, Comptroller or any duly authorized representatives—All contracts
- Records must be retained for at least three years after final payments are made—All contracts
- Compliance with CAA, CWA, EPA regulations—Contracts in excess of \$100,000.
- Mandatory standards relating to energy efficiency—All contracts
- The Lobbying Certification—All contracts
- Federal Debarment and Suspension Requirements—All contracts
- Trafficking in Persons Requirements—All contracts
- U.S. Department of Homeland Security Specific Acknowledgements and Assurances—All contracts.

ATTACHMENT 2

(Referenced in response to Question 7)

REQUIRED CONTRACT TERMS WHEN FEDERAL FUNDS ARE USED

A subgrantee's procurement contracts are required to contain the following provisions when federal fund are used as a source of funds for the contract (The below list is not all-inclusive. A subgrantee should review their Grant Agreement and materials referenced in the Grant Agreement to ensure that all required provisions are included).

- (1) Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms (required in all contracts for more than \$100,000) [44 CFR 13.36(i)(1)].**

No example language; however, see #(2) below.

- (2) Clause that allows the Subgrantee to Terminate Contract for Cause, including the manner by which it will be effected and the basis for settlement (All contracts for more than \$10,000) [44 CFR 13.36(i)(2)]**

EXAMPLE LANGUAGE (Language used by IDHS):

Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part, if the Contractor **fails to:**
1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- (3) Clause that allows the Subgrantee to Terminate Contract for Convenience, including the manner by which it will be effected and the basis for settlement (All contracts for more than \$10,000) [44 CFR 13.36(i)(2)]**

EXAMPLE LANGUAGE (Language used by IDHS):

Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

- (4) **Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000) [44 CFR 13.36(i)(3)]. You can find information on Equal Employment Opportunity at the Department of Labor web-site: <http://library.dol.gov/dol/compliance/comp-eeo.htm>**

EXAMPLE LANGUAGE:

The Contractor and all subcontractors shall comply Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

- (5) **Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts for construction or repair) [44 CFR 13.36(i)(4)] You can find information on the Copeland "Anti-Kickback" Act at the Department of Labor web-site: <http://www.dol.gov/dol/compliance/comp-copeland.htm>.**

EXAMPLE LANGUAGE:

The Contractor and all subcontractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

- (6) **Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 when required by Federal grant program legislation, which includes Emergency Management Performance Grant funds) [44 CFR 13.36(i)(5)]. You can find information about the Davis-Bacon Act, including prevailing wage rates, on the following Department of Labor web-site: <http://www.dol.gov/dol/compliance/comp-dbra.htm>.**

EXAMPLE LANGUAGE (Language used by IDHS):

Davis-Bacon Act

If U.S. Department of Homeland Security, Federal Emergency Management Agency, Emergency Management Performance Grant funds are used as the source of funding, the Davis-Bacon Act is applicable to the federal funds used for this Contract. If this Contract is a construction contract in excess of \$2,000 or a Contract which involves the employment of mechanics or laborers in excess of \$2,500, the Contractor shall comply with the Davis-

Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5).

- (7) **Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers) [44 CFR 13.36(i)(6)]. You can find information on the Contract Work Hours and Safety Standards Act on the Department of Labor web-site: <http://library.dol.gov/dol/compliance/comp-cwhssa.htm>**

EXAMPLE LANGUAGE:

The Contractor and all subcontractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5).

- (8) **Awarding agency requirements and regulations pertaining to copyrights and rights in data. [44 CFR 13.36(i)(9)]**

EXAMPLE LANGUAGE:

The Contractor shall comply with the requirements established by law and this provision which are applicable to publications or other exercise of copyright for any work first produced under Federal financial assistance awards unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations).

- i. For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the recipient grants the government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for government purposes in all such copyrighted works.
- ii. The Contractor shall affix the applicable copyright notices of 17 U.S.C. §401 or 402 and an acknowledgement of government sponsorship (including award number) to any work first produced under an award.

- (9) **Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. [44 CFR 13.36(i)(10)]**

EXAMPLE LANGUAGE:

Audit and Access to Records.

The Contractor acknowledges that some or all of the funds for this Contract are from a federal grant, and the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records that are directly pertinent to this Contract for the purpose of making an audit, examination, excerpts, and transcriptions. The Contractor shall retain and shall make such materials available at their respective offices at all reasonable times during this Contract, and for a minimum of three (3) years from the date of final payment under this Contract, for inspection by the U.S. Department of Homeland Security, the Comptroller General of the United States, or any of their duly authorized representatives. Copies thereof shall be furnished at no cost if requested.

- (10) Retention of all required records for three years after subgrantees make final payments and all other pending matters are closed. [44 CFR 13.36(i)(11)]**

See Example Language under #(10), above.

- (11) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts and subcontracts in excess of \$100,000) [44 CFR 13.36(i)(12)]**

EXAMPLE LANGUAGE:

The Contractor and all subcontractors shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

- (12) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). [44 CFR 13.36(i)(13)]**

EXAMPLE LANGUAGE:

The Contractor and all subcontractors shall comply with Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- (13) Lobbying Certification (Required by terms of federal grant award)**

REQUIRED LANGUAGE:

Lobbying Certification

- A. The Contractor acknowledges that a Federal grant is the source of payments under this Contract and as required by Section 1352, Title 31 of the U.S. Code, and implemented at 44 CFR Part 18, the Contractor certifies that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
 - (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, contracts under grants loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(14) Debarment and Suspension (Required by federal grant award)

REQUIRED LANGUAGE:

As required by 2 CFR 3000.332, the Contractor shall:

- i. Comply with Subpart C of the OMB guidance in 2 CFR part 180; and
- ii. Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

(15) Trafficking in Persons. [Required by federal grant award beginning with federal fiscal year 2010]

REQUIRED LANGUAGE:

Trafficking In Persons

- A. Provisions applicable to a recipient that is a private entity.
1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not:
 - a. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - b. Procure a commercial sex act during the period of time that the award is in effect; or
 - c. Use forced labor in the performance of the award or subawards under the award.
 2. The Federal Awarding Agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:
 - a. Is determined to have violated a prohibition in paragraph A.1, above; or
 - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph A.1, above, through conduct that is either:
 - i. Associated with performance under this award; or
 - ii. Imputed to the you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," as implemented by the Federal Awarding Agency at 2 CFR part 3000.
- B. Provisions applicable to a recipient other than a private entity. The Federal Awarding Agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:
1. Is determined to have violated an applicable prohibition in paragraph A.1., above; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph A.1., above, through conduct that is either:
 - a. Associated with performance under this award; or

- b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," as implemented by the Federal Awarding Agency at 2 CFR part 3000.
- C. Provisions applicable to any recipient.
 - 1. You must inform the Federal Awarding Agency and the State immediately of any information you receive from any source alleging a violation of a prohibition in paragraph A.1., above.
 - 2. The Federal Awarding Agency's right to terminate unilaterally that is described in paragraph A.1. or B., above:
 - a. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - b. Is in addition to all other remedies for noncompliance that are available to the Federal Awarding Agency under this award.
 - 3. You must include the requirements of paragraph A.1., above, in any subaward you make to a private entity.
- D. Definitions. For purposes of this award term:
 - 1. "Employee" means either:
 - a. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - b. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. "Private entity" means:
 - a. Any entity other than a State, local government, Indian Tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - b. Includes:
 - i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR 175.25(b).
 - ii. A for-profit organization.
 - 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102)

(16) U.S. Department of Homeland Security Specific Acknowledgements and Assurances. [Required by US DHS grant award beginning with federal fiscal year 2011]

REQUIRED LANGUAGE:

U.S. Department of Homeland Security Specific Acknowledgements and Assurances

The Contractor hereby acknowledges and agrees, and shall require any sub-recipients, sub-contractors, successors, transferees, and assignees to acknowledge and agree, to comply with applicable provisions governing U.S. Department of Homeland Security (U.S.

DHS) access to records, accounts, documents, information, facilities, and staff, including, but not limited to the following:

- i. Recipients must cooperate with any compliance review or complaint investigation conducted by U.S. DHS.
 - ii. Recipients must give U.S. DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by U.S. DHS regulations and other applicable laws or program guidance.
 - iii. Recipients must submit timely, complete, and accurate reports to the appropriate U.S. DHS officials and maintain appropriate backup documentation to support the reports.
 - iv. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
 - v. If, during the past three years, the Recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the U.S. DHS awarding office and the U.S. DHS Office of Civil Rights and Civil Liberties.
 - vi. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the U.S. DHS Component and/or awarding office.
 - vii. The United States has the right to seek judicial enforcement of these obligations.
- As used in above provisions, the term “Recipients” includes sub-recipients, contractors, sub-contractors, successors, transferees, and assignees.

ATTACHMENT 3

(Referenced in response to Question 11)

44 CFR 13.36(b)(3)

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.